

**Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Executive Business Meeting
Consideration of the Patent Transparency and Improvements Act
March 27, 2014**

We have four judicial nominations and one executive nomination listed on our agenda that were held over last week and are ready to be reported to the Senate by the Committee today. One of these nominees, Gregg Costa of Texas, would fill an emergency vacancy on the Fifth Circuit. I thank the Texas Senators for working with me to move this nominee. We also have some nominations listed for the first time that Republicans may want to hold over a week. When we have a quorum we will report out the nominations we can today.

Also on the agenda is my legislation to address abusive conduct in the patent system. Senator Lee and I introduced our bipartisan bill on this issue last November. Members of this Committee have now been working hard on this issue for the better part of a year.

During that time, I have heard from businesses in Vermont and across the country that are being targeted by so-called “patent trolls.” At our December hearing, we heard testimony from local credit unions that received repeated demand letters asserting that payment was due for their use of ATMs. We have heard from restaurants, website owners, hotels, and other businesses that have been targeted in patent suits simply for using technology they purchased from a manufacturer.

When my parents ran a printing press in Vermont, they did not keep a patent expert on staff. I do not know many main street businesses that do. The strategy for patent trolls is to extort settlements from parties that lack the resources to defend a lawsuit.

The legislation pending before the Committee combines several strategies to address this type of conduct. My bipartisan bill with Senator Lee contains a strong measure to curb bad faith demand letters. The bill improves transparency of patent ownership so that trolls cannot hide behind layers of shell corporations. It helps customers that are sued inappropriately, by allowing the case against them to be stayed while the product’s *manufacturer* litigates the suit. On patent quality, the legislation contains an important provision to strengthen the “post-grant review” process created in the Leahy-Smith America Invents Act, which allows parties to challenge patents at the Patent Office after they issue.

I am working closely with other members of this Committee to craft a Manager’s Amendment that will bring in additional provisions to deter abusive conduct by patent trolls. One provision that is important to Senator Cornyn, Senator Grassley and others would send a strong signal that patent trolls who pursue lawsuits with no reasonable basis should pay reasonable attorneys fees. I am working with Senator Hatch on a provision to address the problem of shell companies that cannot be held accountable because their corporate structure makes them judgment-proof. We are also working on other provisions to improve the process in patent suits.

I appreciate the many different perspectives on these provisions, and know that we will need to strike a balance. Inventors, small businesses, federal judges, and the university community have raised sincere and valid concerns that such provisions, if written too broadly, could harm legitimate businesses seeking to enforce their rights. At the same time, properly tailored measures will provide a valuable tool in deterring abusive conduct. I am committed to crafting these provisions thoughtfully to achieve an effective solution that can pass this year.

After our hearing in December, I convened a series of briefings in January and February so that voices from all sides could weigh in on the proposals. The briefings brought in more than 20 witnesses representing all sides of this debate. Many more inventors, businesses, practitioners, and consumers have continued to write to the Committee and participate in our process as we work to achieve a strong and effective bill. As a result of that process, Senator Lee and I are making changes to the “customer stay” provision that I expect to include in the Manager’s Amendment. That is just one example of how stakeholder input has helped us craft a better bill.

I thank the members of this Committee for joining me in this work. This is an opportunity for us to come together to pass meaningful legislation that will help American businesses, innovators, and consumers while preserving what makes our patent system great.

I hope we will continue our discussions on a Manager’s Amendment, and come together on an agreement in the next few days.

Finally, I want to take a moment to thank Senator Cornyn for agreeing to cosponsor the comprehensive forensic science reform bill that we will be introducing later today. This is an important criminal justice initiative, and I would encourage other members of the Committee to join this bipartisan, commonsense effort.

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